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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL O. ROBERSON,

Defendant and Appellant.

B212577

(Los Angeles County
Super. Ct. No. VA106291)

APPEAL from an order of the Superior Court of the County of Los Angeles,
Beverly R. O'Connell, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H.
Borjon, Supervising Deputy Attorney General, Joseph P. Lee, Deputy Attorney General,
for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Michael Roberson (defendant) appeals from the trial court's ruling on his *Pitchess*¹ motion, arguing that we have a duty to review the trial court's in camera proceeding on his motion to determine whether any discoverable police personnel records were incorrectly withheld. Based on our review of the transcript of the in camera proceeding, we conclude that the trial court did not abuse its discretion in determining that there were no discoverable police personnel records. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND²

The Los Angeles County District Attorney charged defendant in an information with possession of a controlled substance in violation of Health and Safety Code section 11350, subdivision (a)—a felony. The District Attorney further alleged that defendant had suffered a prior serious or violent felony conviction within the meaning of Penal Code sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i).³ The District Attorney also alleged that defendant suffered a prior felony conviction for which a prison term was served within the meaning of section 667.5. And the District Attorney alleged that defendant had been convicted of two prior drug offenses within the meaning of Health and Safety Code section 11370, subdivisions (a) and (c).

Prior to trial, defendant filed a *Pitchess* motion seeking the production of the personnel records of the two Los Angeles County Sheriff's Department deputies who

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

² Because defendant appeals only from the order denying his *Pitchess* motion, we state only the facts pertaining to the trial court's determination of that motion.

³ All further statutory references are to the Penal Code unless otherwise stated.

arrested him, Deputies Martinez and Dowdy. The motion was supported by the declaration of defendant's trial counsel, which declaration provided in pertinent part: "According [to] the arrest report, while driving Northbound on Holmes Avenue, deputies Dowdy and Martinez observed the defendant standing on the East sidewalk. The defendant allegedly made eye contact with the deputies, took his hands out of his pockets, dropped a black plastic baggy on the ground, and began to walk Southbound on Holmes. Deputy Martinez detained the defendant while Deputy Dowdy recovered the black plastic baggy, which contained two off white rock like substances resembling rock cocaine. The defendant was then arrested and charged with possession of rock cocaine. [¶] The [defendant] contends that Deputy Martinez fabricated his police report in order to falsely implicate the defendant for possession of narcotics. I am informed and believe that on the date in question, Deputies Martinez and Dowdy approached the defendant, who was walking down the sidewalk. I am informed and believe that immediately upon approach, the deputies ordered the defendant to place his hands on the patrol car and searched the defendant. I am informed and believe that Deputy Dowdy then spoke to another individual who was present, and proceeded to search some nearby hedges. I am informed and believe that Deputy Dowdy thereafter accused the defendant of dropping the baggy. I am informed and believe that at no point did the defendant ever have possession of either rock cocaine or a black plastic baggy containing rock cocaine. I am informed and believe that at no point did the defendant drop any items whatsoever onto the ground or into the bushes. I am informed and believe that Deputy Ramirez [Martinez] has fabricated his report in order to falsely implicate my client in illegal activity."

At the hearing on the *Pitchess* motion, the trial court heard argument and determined that there was sufficient good cause to conduct an in camera hearing as to whether there were any complaints against the two arresting deputies for false arrest, falsifying police reports or probable cause, planting evidence, or perjury. The trial court then conducted an in camera hearing with the custodian of records for the Sheriff's Department. Following the in camera hearing, the trial court ruled as follows: "The court has made a finding of good cause as to the *Pitchess* motion filed on behalf of

[defendant] as to Deputies Martinez and Dowdy as to certain areas of alleged misconduct—any complaints, rather, by citizens of alleged misconduct as to those two deputies, and the four categories that the court found good cause were whether or not they had ever received any complaints against those deputies for false arrests, falsifying police reports or probable cause, or the planting of evidence, or allegations of perjury. [¶] In reviewing the records with the custodian of records from the Sheriff’s Department as to each deputy, there were no such complaints filed against either of those deputies in any of those categories. [¶] And that will conclude our proceedings this morning regarding that motion. The court has ordered that the proceedings in camera be ordered sealed until further order of court.”

DISCUSSION

Citing *People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1232, defendant requests that we conduct an independent review of the in camera proceedings to determine whether discoverable personnel records were incorrectly withheld. We have reviewed the sealed transcript of the in camera hearing and conclude that no discoverable personnel records were withheld. The trial court therefore did not abuse its discretion in refusing to order the production of the deputies’ personnel records. (See *People v. Jackson* (1996) 13 Cal.4th 1164, 1220-1221 [trial court’s determination on discoverability of police personnel records reviewed for abuse of discretion].)

DISPOSITION

The judgment of the trial court is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.